

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Timothy J. Frady,	)	C/A No. 6:15-2356-TMC-JDA
	)	
Plaintiff,	)	
	)	<b>REPORT AND RECOMMENDATION</b>
vs.	)	
	)	
The Greenville County Detention Center,	)	
	)	
Defendant.	)	
_____	)	

Timothy J. Frady (“Plaintiff”), proceeding pro se, brings this civil action pursuant to 42 U.S.C. § 1983. Plaintiff is currently detained in the Greenville County Detention Center (“GCDC”), and he files this action *in forma pauperis* under 28 U.S.C. § 1915. The Complaint is subject to summary dismissal.

**BACKGROUND**

Plaintiff alleges the following facts. He is currently detained in the GCDC for an unspecified charge.<sup>1</sup> [Doc. 1 at 2.] He just learned that, in the past, the GCDC violated his legal rights by incarcerating him for a second time on the exact same charge for which he had already been incarcerated. [*Id.*] Presumably while he was serving the second time on the charge, he complained to the GCDC staff, but they did not care. [*Id.*] Then, he called his attorney to complain, and she “called and had the charge lifted off me but only after I had done around 2 months falsely imprisoned.” [*Id.*] Specifically, Plaintiff alleges he served time in the GCDC on a warrant number I357195, and the charge was dismissed. [*Id.* at 3.] However, he was re-arrested for the same charge and wrongfully served time for two months. [*Id.*] The two months of unlawful incarceration caused him emotional damage and

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<sup>1</sup>Plaintiff is not complaining about his current incarceration in the GCDC.

lost wages and constituted cruel and unusual punishment. [*Id.*] He seeks approximately \$96,000 in damages, and he brings suit against the entire staff of the GCDC. [*Id.* at 2, 4.]

Although Plaintiff does not allege the dates of his alleged wrongful incarceration, he attached exhibits to the Complaint that purport to refer to Plaintiff's arrests on warrant number I357195. [Doc. 1-2 at 1–2.] It appears that he may have been arrested on said warrant in Greenville County in 2004 and again in 2005. [*Id.*]

This Court takes judicial notice that Plaintiff has a pending criminal charge of criminal domestic violence of a high and aggravated nature in the Greenville County Court of General Sessions. See Greenville County 13th Judicial Circuit Public Index, <http://www.greenvillecounty.org/SCJD/PublicIndex/PISearch.aspx>, (enter "Timothy Frady" and "search," click on "2015A2330202198," click on "Charges") (last visited July 1, 2015); see also *Philips v. Pitt Cnty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts "may properly take judicial notice of matters of public record."); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that 'the most frequent use of judicial notice is in noticing the content of court records.'"). From those records, it appears that he was arrested on the charge on March 16, 2015.

### **STANDARD OF REVIEW**

Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(d) DSC, the undersigned is authorized to review the Complaint for relief and submit findings and recommendations to the District Court. Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action "fails to state a claim on which relief may be granted," is "frivolous or malicious," or "seeks monetary relief against a

defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). Further, Plaintiff is a prisoner under the definition in 28 U.S.C. § 1915A(c), and “seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). Thus, even if Plaintiff had prepaid the full filing fee, this Court is charged with screening Plaintiff’s lawsuit to identify cognizable claims or to dismiss the Complaint if (1) it is frivolous, malicious, or fails to state a claim upon which relief may be granted or (2) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

As a pro se litigant, Plaintiff’s pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*). However, even under this less stringent standard, the pro se pleading remains subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct Plaintiff’s legal arguments for him, *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir. 1993), or “conjure up questions never squarely presented” to the court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

### **DISCUSSION**

The Complaint is filed pursuant to 42 U.S.C. § 1983, which “‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). A civil action under § 1983 “creates a private right of action to vindicate violations of ‘rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Rehberg v. Paulk*, 132 S. Ct. 1497, 1501 (2012). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

This action is subject to dismissal because Defendant is not subject to suit under § 1983. It is well settled that a defendant in a § 1983 lawsuit must qualify as a person, and inanimate objects such as buildings, facilities, and grounds do not qualify as “persons” and cannot act under color of state law. See *Nelson v. Lexington Cnty. Det. Ctr.*, C/A No. 8:10-2988-JMC, 2011 WL 2066551 (D.S.C. May 26, 2011) (finding that a building, detention center, is not amenable to suit under § 1983); *Brooks v. Pembroke City Jail*, 722 F. Supp. 1294, 1301 (E.D.N.C. 1989) (“Claims under § 1983 are directed at ‘persons’ and the jail is not a person amenable to suit.”). Similarly, the staff of an organization is not considered a person subject to suit under 42 U.S.C. § 1983, and groups of people may not be sued under § 1983. See *Harden v. Green*, 27 F. App’x 173, 178 (4th Cir. 2001) (finding that the medical department of a prison is not a person pursuant to § 1983); *Dalton v. South Carolina Dep’t of Corr.*, C/A No. 8:09-260-CMC-BHH, 2009 WL 823931, at \*2 (D.S.C.

March 26, 2009) (dismissing the medical staff of SCDC and Prison Health Services as defendants because they were not persons). The GCDC may be considered to be a building or a group of people, such as the entire staff. However, it cannot be considered as a person. Therefore, this action should be dismissed for failure to state a claim on which relief may be granted.<sup>2</sup>

### **RECOMMENDATION**

It is recommended that the District Court dismiss this action without prejudice and without issuance and service of process. *See Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); and 28 U.S.C. § 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal). **Plaintiff's attention is directed to the important notice on the next page.**

July 2, 2015  
Greenville, South Carolina

s/Jacquelyn D. Austin  
United States Magistrate Judge

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<sup>2</sup>If Plaintiff had named a proper defendant subject to suit under § 1983, Plaintiff would still have a statute of limitations issue. *See, e.g., Mooney v. Anderson*, C/A No. 8:09-2639-PMD, 2009 WL 3835884, at \*3 (D.S.C. Nov. 16, 2009).

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk  
United States District Court  
300 East Washington Street, Room 239  
Greenville, South Carolina 29601

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).